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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,931	12/16/2003	John Below	RIX #2	5342
40992	7590	06/06/2005	EXAMINER	
THOMAS R. LAMPE 1390 WILLOW PASS ROAD SUITE 1020 CONCORD, CA 94520			HANAN, DEVIN J	
			ART UNIT	PAPER NUMBER
			3745	

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/736,931

Applicant(s)

BELOW, JOHN

Examiner

Devin Hanan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 1,3-6 and 8-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6,8 and 11 is/are allowed.
- 6) ☒ Claim(s) 1,3,5,9 and 10 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's arguments and amendments, see amendments, filed 4/20/2005, with respect to the rejection(s) of claim(s) 1-6, 9 and 10 under 35 U.S.C. 102 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn.

However, upon further consideration, a new ground(s) of rejection is made in view of Wahlmark (U.S. Patent 2,611,318). Examiner regrets not citing this patent previously as it was found after the initial office action was sent out. Examiner also notes that drawing changes requested in the first office action were not addressed.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the details of the concavely spaced cavities of the spaced reciprocating members must be shown or the feature canceled from claim 4. In particular, figure 2 (reciprocating member), 3A, 3B and 4 do not clearly show the area interacting with the outer race to be a concave cavity. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure

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number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, are rejected under 35 U.S.C. 102(b) as being anticipated by Wahlmark (U.S. Patent 2,611,318).

Wahlmark discloses in combination: a housing (10) defining a housing interior;  
a swash plate drive shaft (16) disposed in a housing interior and rotatably mounted relative to said axis of rotation;

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a swash plate (17) mounted on said swash plate drive shaft angularly disposed relative to an axis of rotation and located in said housing interior, a swash plate having an outer swash plate portion (34) surrounding said swash plate drive shaft and generally freely rotatably moveable about and relative to said swash plate drive shaft and relative to said housing,

a swash plate comprising a bearing assembly and said outer swash plate portion comprising an outer race (34) of said bearing assembly, said outer race having a contact surface (where 14 and 34 meet) ; and

a plurality of spaced reciprocating members (14) mounted for reciprocatable axial movement relative to said housing and frictionally engaging the contact surface of said outer race but not preventing rotation of said outer race about and relative to said swash plate drive shaft and relative to said housing, whereby the locations of contact between said contact surface and said reciprocating members change (compare the contact surfaces of the two pistons in figure 1), when said outer race rotates about said swash plate drive shaft and relative to said housing to reduce wear between the reciprocating members and the outer race.

Regarding claim 3, Wahlmark discloses an outer race that has a convexly curved outer peripheral wall adjacent to the contact surface (figure 1, 34).

Regarding claim 5, Wahlmark discloses a convexly curved outer peripheral wall of the outer race comprises a segment of an imaginary sphere (figure 1, the outer peripheral wall lies on the plane of a sphere).

Regarding claim 9, Wahlmark discloses the spaced reciprocating members are fluid compressor pistons (14, lines 28-33).

Regarding claim 10, Wahlmark discloses a ball bearing assembly has an inner race (29) affixed to a swash plate drive shaft and ball bearings (35) disposed between an inner race and an outer race.

### ***Allowable Subject Matter***

Claims 4 and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 11 and 8 are allowed.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Devin Hanan whose telephone number is 571-272-6089. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Look can be reached on 571-272-4820. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Devin Hanan  
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Art Unit 3745



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5/31/05